

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MOTION TO DISMISS

COME NOW Defendants, by and through their respective counsel, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), move this Honorable Court to dismiss all claims in the Plaintiffs' Complaint. In support of this motion, Defendants incorporate their contemporaneously filed Memorandum in Support of Motion to Dismiss as if fully set forth herein, and state as follows:

1. Plaintiffs have failed to allege that the conduct alleged in the complaint involves interstate commerce, and in fact plead facts that make clear the conduct is purely intrastate in nature. Therefore, the only basis on which Plaintiffs purport to invoke this Court's jurisdiction - claims arising under the federal Sherman and Clayton Acts - does not exist. Therefore, the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

2. Plaintiffs' Complaint should be dismissed for lack of antitrust standing.
3. Facts alleged in Plaintiffs' Complaint make clear that Plaintiffs' claims are barred by the statute of limitations.
4. Plaintiffs have failed to state a claim for relief under the Sherman or Clayton Acts; thus, the federal claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).
5. The dismissal of Plaintiffs' federal claims under Fed. R. Civ. P. 12(b)(6) requires dismissal of the Alabama Antitrust Act claim under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.
6. Plaintiffs have failed to state a claim under the Alabama Antitrust Act, which is interpreted in accordance with federal antitrust law; thus, Plaintiffs' state law count fails to state a claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants respectfully request that this Court conduct oral argument on this motion, dismiss with prejudice the Complaint, and grant Defendants such other relief as may be appropriate.

Respectfully submitted this the 31st day of January, 2006.

ORAL ARGUMENT REQUESTED

s/ James E. Williams

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CERTIFICATE OF SERVICE

I hereby certify that on this the 31st day of January, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of such filing to the following:

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